

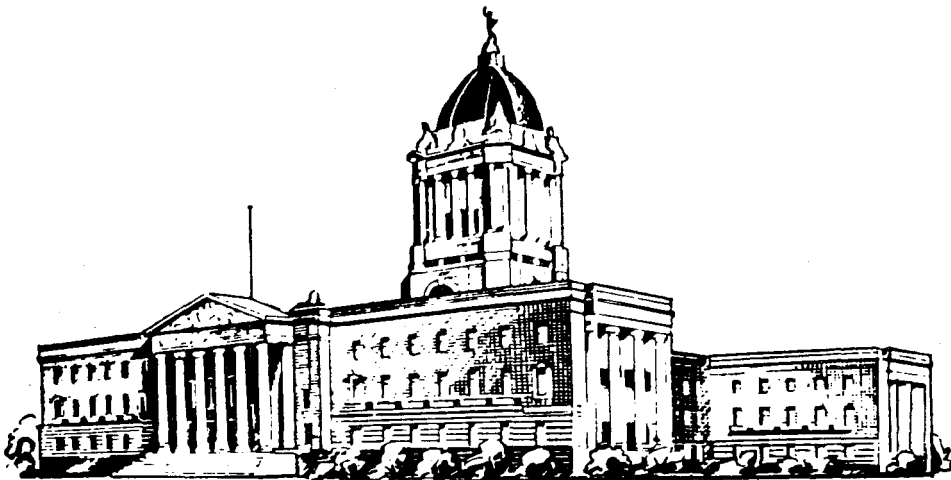


Legislative Assembly of Manitoba

**STANDING COMMITTEE
ON
STATUTORY REGULATIONS AND ORDERS**

Chairman

**Mr. Warren Steen
Constituency of Crescentwood**



Tuesday, July 18, 1978 10:00 a.m.

**Hearing Of The Standing Committee
On
Statutory Regulations and Orders
Tuesday, July 18, 1978**

Time: 10:00 a.m.

CHAIRMAN: Mr. Warren Steen.

MR. CHAIRMAN: Committee come to order. Members of the committee, when we left off earlier today we were on Page 8 of Bill 39, subsection 26, Penalty for Default under Order. Mr. Parasiuk.

MR. PARASIUK: Before we leave 25, now that my motion which was, I think, a superb motion substantively but has been ruled out of order because of procedure, since that has been ruled out of order, I think it is important, however, to get some statement from the Minister as to what is being done with respect to the whole area of enforcement of maintenance. The Minister has indicated that he has got an internal task force that is doing some work on this. I would like to point out that there was going to be a more public type of instrument created by the last government to look into the whole matter of enforcement and maintenance. We have had some seven months since the legislation that is on the books now was suspended and it strikes me that not very much has been done in the whole area of enforcement of maintenance. This was something that was going to be carried out last fall. Now we find ourselves in the middle of summer in 1978 with very little information on enforcement of maintenance orders. So I would like to ask the Minister who is on his internal task force; will there be any lay people assigned to it; will there be public representations; will there be any public discussion of this; will there be public hearings or public meetings through the course of the summer before anything final is brought forward by the government on this matter?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, I indicated earlier this morning that the review was proceeding. It was not completed yet. I indicated in general some directions in which I saw the enforcement of maintenance orders proceeding. One was a central registry; another was the automatic enforcement of maintenance orders; the third was some improvements in the administration which I have not yet finalized. The report has not yet been completed, but one thing I have learned, Mr. Chairman, the member wonders about public discussion, I can tell him that this area has been discussed much to the public and will probably continue to do so.

MR. CHAIRMAN: Mr. Parasiuk. Can we just take a minute while the Minister changes hats and becomes the Minister of Municipal Affairs for a moment?

MR. PARASIUK: Sure.

MR. CHAIRMAN: Can we bring the committee back to order, please. Mr. Parasiuk.

MR. PARASIUK: Thank you, Mr. Chairman. I presume then that this task force will finish its work by the end of the summer or some time in the autumn. I hope that this task force is not entirely comprised of legal people and that frankly I've noticed a difference in attitude towards enforcement of maintenance on the part of those people presenting briefs. By and large, those people who are lawyers tend to look at what takes place in the court and after that they really don't pay too much attention to what's gone on. Other people who are working in the area of dealing with domestic problems or child care or social services generally have come forward and they are left with the problem and they've had much more emphasis, or they would place much more emphasis on this whole question of maintenance, on enforcement of maintenance, of adequate maintenance. I'm hoping that some lay people, not just lawyers, will be on this task force because if it's just an internal

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group within the Attorney-General's office I would think that most, if not all, of these people on the task force will be lawyers who might only look at the legal aspects and not look at some of the other aspects from a lay perspective, so I would hope that other people will be on this task force.

Secondly, if this review is completed, I assume that it will be looked at by the Minister and by the government. Is it the Minister's intention since the House won't be sitting, to send us copies of this report at some stage so that we can peruse it as well. We've sat here listening to a lot of presentations that have dealt with, in part, enforcement of maintenance or the whole question of maintenance and I'm wondering if the Minister will make that type of undertaking to us here.

MR. MERCIER: I'll have to determine that in the future, Mr. Chairman.

MR. PARASIUK: Okay, just as a further argument in favour of that, we've asked questions regarding fact. How many maintenance orders aren't enforced? How much is involved? How much is paid by social assistance? All that information we've not really been able to get. We've been able to look at some of the experience in Alberta but I think it's very important for us to know what is actually taking in Manitoba and since we aren't in a position to have that information, I think that those people who have sat in on this committee and have spent some time getting into this whole area would benefit from that type of information which undoubtedly will be developed or brought together by this internal group within the Attorney-General's . . .

MR. CHAIRMAN: Subsection 26, we have an amendment in this Section.

MR. MERCIER: Move it as distributed, Mr. Chairman.

MOTION:

That Section 26 of Bill 39 be amended

(a) by striking out the word "fulfil" in the 1st line thereof and substituting therefor the word "comply with"; and

(b) by striking out the words "unless the provision is sooner fulfilled" in the 4th and 5th line thereof.

MR. CHAIRMAN: It's been moved by Mr. Mercier as distributed.
Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I've mislaid my amendments but I think I have a note on that just to "comply with" instead of "fulfilled".

MR. MERCIER: Right.

MR. CHERNIACK: . . . and the other is . . . well, why should I draw a conclusion. Can Mr. Mercier explain the reason for that? —(Interjection)— I know. What is the result of the removal of that? Does it mean they can go to jail anyway even if they fulfill or comply with the order? Is that the point that it broadens the court discretion because that phrase would take away, that something coming along and complying has saved the fine or the penalty?

MR. MERCIER: Mr. Chairman, we had earlier deleted Section 10 because this general provision section is applicable or can be a general one for the whole Act.

MR. CHERNIACK: Well, Mr. Chairman, as I understand it, having this phrase in 26 means that let us say a defaulting person is hauled in, is convicted and is say put in jail for 15 days. He could then make the payments and get out sooner, that's the way I interpret it and that is now being removed to say that if he's in default he should be penalized regardless of how he remedies the problem. I just want to confirm that that is right because that's my impression.

MR. MERCIER: That's right.

MR. CHAIRMAN: (Sections 26 to 31(2) were read clause by clause and passed.)

MR. CHERNIACK: Mr. Chairman, before we leave the enforcement Section, I really don't believe Mr. Mercier could have possibly done the review which he planned to do yesterday in regard to 25(1). I just want to know the mechanics, just confirm the mechanics again. I gather that Mr. Mercier

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will meet with Mr. Tallin and that they will prepare an amendment along the lines we discussed and Mr. Mercier will decide whether or not he wishes to propose it, and if not, then he would turn it over to me to do. Is that the understanding?

MR. MERCIER: That is correct.

MR. CHERNIACK: Yes. And I suppose it depends on if he has time in which to do it. As long as it's done within the time required under the rules, the 24-hour, or whatever that rule is in relation to bring it in on the report stage.

MR. MERCIER: Yes. I would hope so, and I must say, if that's not possible, I would think, in view of the undertakings we have made here, that there would be no objection if the time limit is . . .

MR. CHERNIACK: Well, as long as it's done before the report stage is reached in the House, even if he —(Interjection)— Fair enough.

MR. MERCIER: All right.

MR. CHAIRMAN: Section 32—pass; Section 33—pass; Section 34—pass; Section 35—pass; Section 36—pass; Section 37—pass —

MR. CHERNIACK: Nay. I think we should have a vote on that.

MR. CHAIRMAN: All right.

QUESTION put on Section 37, MOTION carried. (Yeas, 6; Nays, 3.)

MR. CHAIRMAN: The motion that 37 pass is passed. 38—pass; 39 . . .

MR. CHERNIACK: Mr. Chairman, I'd like to hear some discussion on 39, what is planned, and why can't it be brought in, what's the holdup? Why can't it be on Royal Assent?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, it's simply a matter of being able to confirm that all of the courts are ready to proceed under the new Act, as the former government did, I believe, in allowing a period of five months for the courts to prepare themselves to hear these applications. I don't expect that we'll take that long. I would expect it will be some time early this fall that the Act will be proclaimed.

MR. CHAIRMAN: Mr. Cherniack. Order please.

MR. CHERNIACK: I'm just looking, Mr. Chairman, at the . . . Then the only holdup will be, as I understand it, that the Attorney-General will be awaiting a signal from the three courts that they are ready to proceed with this Maintenance Bill.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Pardon me, I was reading.

MR. CHERNIACK: I'm saying, I want to confirm that the only holdup will be a signal from the courts that they are ready to proceed.

MR. MERCIER: Yes, Mr. Chairman, and we have been discussing the Acts with the Chief Justices and judges of the courts as this matter has proceeded.

MR. CHAIRMAN: Section 39—pass. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I believe the next item is to deal with the motion which I had repeated, —(Interjection)— and I . . .

MR. CHAIRMAN: Can I get 39 passed? Section 39 —pass.

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Back to the first page of the bill, the Preamble. Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I would move that Bill 39 be amended by striking out — and I'm having to add this to what I had distributed — by striking out the enacting clause thereof, and substituting therefor the following preamble and enacting clause: "Whereas" and then carrying on as per the printed sheet down to "of the other." "Whereas for that purpose it is necessary to of spouses as individuals within recognize the equal position marriage;

Whereas in support of such recognition it is necessary to provide in law for mutual obligation: in family relationship, including equitable sharing of parents of responsibility for their children and

Provision of equitable maintenance to a spouse upon marriage breakdown in order to permit the obtaining of financial independence of the other."

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I just want to ask Mr. Pawley, it says "Whereas for that purpose." It implies that there is something preceding it, and I don't quite . . .

MR. TALLIN: Delete "for that purpose."

MR. PAWLEY: Delete "for that purpose."

MR. CHERNIACK: "Whereas it is necessary to recognize . . . "

MR. PAWLEY: "Whereas it is necessary to recognize the equal position of the spouses as individual within marriage . . . " and continue on.

MR. CHAIRMAN: In the proposed amendment — to the members of the committee — is agreed that we accept that deletion in the proposed amendment? I'm not saying that the amendment is passed, that the member proposing the amendment can make a change in it? (Agreed)

Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Spivak asked how it would read and I too would like to get that on the record.

MR. CHAIRMAN: From Mr. Pawley?

MR. CHERNIACK: From anybody.

MR. CHAIRMAN: Mr. Pawley, it has been asked by Mr. Cherniack and Mr. Spivak as to how would read.

MR. PAWLEY: "Whereas it is necessary to recognize the equal position of spouses as individual within marriage; and whereas in support of such recognition it is necessary to provide in law for mutual obligations in family relationship, including equitable sharing of parents of responsibility for their children and provision of equitable maintenance to a spouse upon marriage breakdown in order to permit the obtaining of financial independence of the other." And that would of course be inserted right at the commencement.

MR. CHAIRMAN: Any discussion? Mr. Mercier.

MR. MERCIER: Mr. Chairman, while we are introducing, as a result of the delegations and comments from the committee, a proposed preamble to The Marital Property Act, we have not heard any request for a preamble to The Family Maintenance Act and it is unusual in legislation in Manitoba to include a preamble and when it is done, I think you have to be very careful that you are not expressing something that is contrary to the actual provisions of the bill. With all due respect, I think the preamble is so general and in fact with some inaccuracies, that I couldn't accept it.

We say in the first paragraph, "recognize the equal position of spouses as individuals with marriage." What is actually happening in the bill, when you are dealing with maintenance and support is that you are recognizing perhaps at least the unequal economic positions of the spouses upon a marriage breakdown. I just don't think, in general, this particular preamble adds anything to the bill and I think is unnecessary to this particular bill. I haven't seen any need demonstrated for a preamble to this particular piece of legislation.

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MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I think that if this bill brings in new concepts, new principles in the marriage relationship, then it should say so rather than be considered just an improvement or revision of the former law. The fact is we know it isn't, and there are certain principles established in this bill which are new, I believe, to the traditional approach to Wives and Childrens Maintenance Act, etc., although it is not as new as I would like it to be and there are certain drawbacks in it. Still, I think that it recognizes a principle of equal rights, if not equal position, in that we provide that each spouse is entitled to money of his or her own for personal needs. We provide that a spouse is entitled to know the earnings of another spouse. These are new principles, new concepts, and I think that anybody reading the bill should know that we are breaking ground, we are changing the old traditional rules. That's why I think that it is advisable. I agree with Mr. Mercier it is not common for a preamble, but it is worthwhile having so that people reading it, both the lay person, and the professional, the judge, will know that the Legislature realizes full well that there are certain principles that are being newly established.

To me the most important is the very last of it, the need to permit the obtaining of financial independence. Now that is a new concept, Mr. Chairman. It is that a person is not entitled forever to be on the payroll of the supporting spouse, but has an obligation, and that obligation is to become financially independent, and that's new, Mr. Charirman, that is new.

Now, Mr. Mercier may not like some of the wording and I would be glad to have him write it, but it seems to me that these points are of sufficient import to justify a preamble, just as we will be discussing in The Property Act, the need and advisability of a preamble. I think we should say so. You know that I am not enthused about the changes that have been made, but even with these changes with which I don't agree, I believe that we are entering into a new phase in the family maintenance relationship, and I would think that it is advisable to say so, with pride.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I want to just add that in view of the fact that it is proposed that a preamble be added to The Marital Property Act, and I think for very valid reasons enshrining some of the new principles which are expressed in that legislation, albeit we feel quite inadequately that at the same time it would be fitting and proper, since these bills really are a package pertaining to family law — they have been throughout the entire process of our family law review and the process toward legislation — that it would be wise to also, I think quite fitting. I think we all agree that there is lack of enthusiasm about preambles, but if we are dealing with these two bills as a couple, then I think that it would not be unreasonable to provide for a preamble insofar as this bill. If Mr. Mercier would prefer some other wording, then he certainly is free to propose that. I'm not saying that this particular wording has to be the wording, in every respect, but I think it would be very fitting to have a preamble to this bill as well as to the companion piece of legislation.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, as I indicated, I appreciate the position — I have to appreciate the position with respect to this bill — there are new concepts being introduced, just as in The Marital Property Act, and in that Act we are proposing a preamble, so some consideration, perhaps, should be given to a preamble to this Act. I'm not prepared to accept the wording in this proposed preamble, at this time, without having an opportunity to attempt to draft, perhaps, something that could find more general acceptance among my colleagues, and if we were required to vote on this, I would have to vote against it.

MR. PAWLEY: I wouldn't like to have this rejected, and therefore the very concept of preae, I and rejudge one being introduced later, so I would withdraw this preamble, and if the Attorney-General does not proceed with preamble at report stage, then of course I would reserve the right to introduce this preamble, or some amendment of this.

MR. CHAIRMAN: Does Mr. Pawley have consent of the committee to withdraw his motion? (Agreed). Then we'll move on.

Preamble—pass; title—pass; Bill be reported — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I have just been looking at my working paper, and I'm wondering whether it would be possible to have someone in Legislative Counsel or the Attorney-General's department, just give us a revised copy of this bill? I'm thinking not of us as much as our colleagues in the House, who will be presented with some important variations and changes. It may not be

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too big a job to xerox enough copies for the Legislature.

MR. CHAIRMAN: I'm sure that it can be done.
All right. Bill be reported—pass — Mr. Pawley.

MR. PAWLEY: I just want to indicate that my view of this legislation would depend a great deal on the outcome of the Attorney-General's review of the amendment that he is considering and may introduce at third reading on report stage, in pertaining to fault where there are children involved. I think that if the Attorney-General sees fit to remove fault insofar as a situation in which a spouse has custody and responsibility for the upbringing of children, so that we can be sure that that level of maintenance for that spouse is not prejudiced by some misconduct in the past, then the Attorney-General will have made a very progressive move to assure that there will be some degree of fault remaining within the legislation. At least I think we will have been able to have got to the core of the concerns that have been expressed by the public, I think the Attorney-General's own concerns will have been adequately dealt with, and certainly the concern of the opposition.

So I would like to make just one further plea to the Attorney-General that he, and as I know he will, give that aspect the fullest consideration before reaching third reading.

MR. CHAIRMAN: Bill be reported.
Is the committee ready to proceed with Bill 38?

BILL NO. 38 — THE MARITAL PROPERTY ACT

MR. CHAIRMAN: Section 1(a)—pass; 1(b) — Mr. Corrin, I'm informed has a motion on 1(b). And so does Mr. Mercier have one . . .

MR. CORRIN: Yes, Mr. Chairman, Mr. Mercier's motion is as provided to us yesterday evening. I presume?

MR. CHAIRMAN: Yes.

MR. CORRIN: Adding the words, "life or fixed term annuity" after the words "life insurance policy" in line 2 of sub-clause (b)?

MR. MERCIER: Yes.

MR. CORRIN: That's the full extent of the amendment?

MR. SPIVAK: Has that been moved yet?

MR. CORRIN: It hasn't been moved, although I would prefer to introduce my amendment prior to dealing with that. I'm sure it won't provide any difficulty for the committee.

Mr. Chairman, I will attempt to explain my amendment. I think it is rather straightforward and quite simple. It deals with Clause 1(b), in that it would simply substitute for that clause the definition of commercial asset, which would simply exclude all assets that are family assets. It would read,

"Commercial asset means an asset that is not a family asset." So the presumption would be that all assets were family assets, unless they were specifically excluded under the definition of the term "family asset", and what we've done in preparing the amendment is attempted to define what would be a family asset by making the following amendments, and the first one would be:

Sub-clause 1(b)(ii) of the bill would be struck and —(Interjection)— Yes, it's in writing, Mr. Spivak. I don't think it has been distributed, but it's in writing with the Chairman, so . . .

MR. CHAIRMAN: To Mr. Corrin, the copy he gave me, I'm letting Mr. Mercier and Mr. . . .

MR. SPIVAK: Would it be possible to get a copy.

MR. CHAIRMAN: Maybe you could run off six or eight copies.

MR. CORRIN: Maybe it would be easier, because if everybody were to read the amendment then it would obviate the necessity of my going through it, and trying to relate to the specific . . .

MR. CHAIRMAN: Mr. Corrin, with your permission, maybe we could let Mr. Mercier deal with that.

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amendment now while yours is being copied? Is that agreeable or would you still prefer to deal

MR. CORRIN: Well, what I can say, just by way of introducing my amendment I would say this, in order that everybody be aware of it, that my amendment would include in the definition of family assets, all savings accounts except business accounts, accounts that were clearly for the purpose and sole use of business and commerce, pension plans would be included. Spousal pay cheques would be considered to be family assets. I was quite concerned because I think there is a need for this asset to be specifically defined as a family asset. I think this was a deficiency in the wording of the bill before us, and I think that it need be made explicit by introducing it to the section. It would also include all savings bonds and investments, such as registered retirement savings plans.

I might add that business investments, for instance investments in bonds or things of that nature that would be part-and-parcel of a commercial activity or a business, on the part of one spouse would not be included within the definition of family assets. So that the intention is really to bring clarity to the section, because I think its meaning is presently quite obtuse. And I say that respectfully, Mr. Chairman. I note that there is some real confusion, for instance, with respect to what types of savings accounts would be considered to be commercial and which ones would be considered to be family assets. I can see a considerable amount of confusion on this point. The present qualification, for instance, a savings account being considered to be a family asset is that the account is ordinarily used for shelter or for transportation, or for household, educational, recreational, social or aesthetic purposes. Well, I suppose the argument will be made by some spouse that the account wasn't used for one of those, that it was just held; it was a savings account in the classic sense and that it hadn't been previously actually employed or used for any one of those purposes.

I suppose somebody else will drag in the further red herring to the effect that it was intended that the account should be used for that under certain contingencies. It seems to me that we should be very clear. I don't think that we should leave legislation of that sort on the books. I think that we should be very clear that our intention is to vest rights to all savings. It seems to me that that's within the spirit of the legislation. If a savings is not specifically associated with a business or a commercial activity, it seems safe to presume that everybody would agree on this committee that such an investment or asset would be contemplated to be a family asset.

I think it's also important because most people — I think we can almost say 99 percent of all the public of this province — probably do have some savings. Things like Canada Savings Bonds or RRSPs are in fairly standard usage now throughout the country and I would imagine that most of those people if asked to specify what they thought those assets were would reply that they thought or considered that those assets were of a family nature. Under the present legislation, I think they would be unfortunately deemed to be commercial assets, and that would be much, of course, to the detriment of spouses who had, during brighter days of their marriage, made sharing arrangements, sharing and investment plans of this nature.

I might also add that this particular amendment was drafted with the assistance of the Legislative Counsel, with the exception of a few amendments made by myself, and I think that it is something that could be dealt with this morning. I don't think that it presents, again, a particular problem. I think it's fairly straight forward.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, just on a point of procedure, I'm just going to explain the intent of the series of amendments, which are sort of tied into one, but we are going to be dealing with each portion. So on the basis of his explanation, which we understand, I think what he should do is move his 1(b), because that's what we're on, and we deal with it and then go on. The intent is understood and I don't think it's necessary to deal with it in its totality but rather by section-by-section.

MR. CHAIRMAN: I would, to the members of the committee, think that what Mr. Corrin wants is 1(b)(1) and 1(b)(2) now, right? —(Interjection)— Well, where he has sort of broken his motion into two parts.

MR. CORRIN: Could you repeat that, Mr. Chairman, I'm sorry.

MR. SPIVAK: He is basically amending 1(d), so therefore if we deal with 1(b) and you accept his amendment that it is consistent with what the other alterations . . .

MR. CHAIRMAN: I believe Mr. Mercier is of the opinion that we should deal with the whole page

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as a motion.

MR. SPIVAK: All right.

MR. CHAIRMAN: Is that agreeable to the members of the committee? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Mr. Spivak's proposal would make sense if we had a clear understanding of what the majority intends to do on this. If it intends to vote it down without debate then all we do is accept his proposal and just do that. If, on the other hand, we wish to discuss the principle, then the whole thing is a package and should be discussed. Once we arrive at a consensus, then we can deal with the sections individually, and I think, therefore, Mr. Mercier's suggestion makes sense, so that we can discuss the practical application of these amendments.

MR. CHAIRMAN: All right, then, we will deal with the page as a motion. Mr. Mercier.

MR. MERCIER: Mr. Chairman, I don't believe that we can accept the motion at this point in time. The reason I say that is that I believe very strongly that matters referred to, like bonds have been discussed, insurance policies have been discussed, pension plans have been discussed, registered home ownership plans have been discussed, I think those are so clearly assets which will develop from the income of two spouses that they will be shared equally, either under the discretion available in 13(1) or (2) that I, frankly, see no concern as to where they are classified. I think it's very clear that with respect to assets like that that they will and should be divided equally among the spouses.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: If Mr. Mercier is that certain that they will be dealt with on an even basis insofar as equal division, Mr. Mercier then should have no objection to including these assets under the family assets, so they will clearly be dealt with under the very limited discretion. Mr. Mercier, by his statement, seems to indicate that he feels they ought to be dealt with equally. He sees no reason why they would not be dealt with equally, even under his broad discretion. I think that many would disagree, that they would be dealt with equally under the broad discretion that is provided for under 13, Section 13, so that if we want to remove any doubt then we would move these assets over into the category of family asset.

Philosophically, it would be much more in tune with certainly what I had hoped that the intention of this legislation would be, and would also be very consistent with the changes that were made at the beginning of this year insofar as the Canadian Pension Plan is concerned. As of January 1, 1978, all Canadian Pension Plan benefits are split equally between spouses in the event of the termination of the marriage. Now, they're doing it insofar as the Canadian Pension Plan benefits are concerned. No problem in accounting; the principle is accepted for Canada Pension Plan benefit so that if that be the case, then I see no reason why we should not get into the forefront insofar as other division of other pension plan and annuity programs, why we should lag behind the change that the Federal Government has made insofar as Canada Pension. Let's recognize and accept the same principle insofar as the other assets are concerned.

Mr. Mercier has indicated that in spirit and philosophy he has no objection to that; in fact, I feel that will be the outcome with this legislation. Well, let's say it; let's say it. Let's not leave the chance of that being vague if we all wish to see that happen. Let's make sure that that does occur and the amendment proposed by my colleague, the Member for Wellington, certainly would ensure that would be the case.

MR. CHAIRMAN: Are you ready for the question on Mr. Corrin's motion?

MR. CORRIN: A question.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I feel motivated now, Mr. Chairman, in view of the Attorney-General's obvious reluctance to deal with this particular amendment, I feel motivated to remind, not only the Attorney-General but members of the Committee, that this was not a concern that was solely within the purview of a very few deponents' briefs, this was a concern that was mentioned on — I would hesitate to guess precisely, but I think I can guess generally — dozens of occasions in the course of our 27 hours of hearing briefs. I think the one that sticks out in my mind is the brief submitted

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by the gentleman, Mr. Murray Smith, who I think made the point very well. He said that he felt that in his review of this particular section, and the relief provided to spouses under the discretionary section, being Section 13 of the Act, he felt that if we were really going to provide a form of insurance we had to be more precise. And I think he made the point almost graphically when he said that otherwise this insurance policy, The Marital Property Act, was going to be very much like the insurance policy that insures loss in any circumstance, except losses that occur either in the air, or in the home, or while in your automobile, or at sea, or at work. I think those were the terms he used and I think that's precisely what we're getting into. I mean, we're not charting the course sufficiently clear

If for the courts. Mr. Mercier is sincere in what he's said — and of course I'm not going to challenge the sincerity of his remarks — but if he is sincere, then I would suggest that he act in accordance with the representations made by Mr. Pawley, and those were to the effect that he should clarify, he should clarify the meaning of the legislation in order that it becomes evident and clear on the face of the legislation what the intent of the Legislature was in dealing with assets either of a family or commercial nature. And it's my opinion — and I say so modestly — that these amendments do enhance the definition specified in Section 1, clauses (b) and (d). I think that a court or a lawyer or even a lay person reading the section would find these amendments of some utility in clarifying the import, purport of the legislation. I think that is really the object of the exercise. If the Committee is doing its work in good faith, and not in a crass political manner, but if the Committee is really concerned as a unit, as a cohesive lawmaking unit, that the legislation that it recommends to the Assembly at the reading stage of this bill is suitable for common usage within the province, then I would suggest that the Committee should do everything possible to clarify the intention of the Legislature, and in this particular case — I suppose I really do believe that the Attorney-General, in his own mind, is satisfied that this means what he thinks, or has been told it means. But obviously, there were dozens of people representing thousands more who didn't agree with him. And some of them were lawyers — there were a number of people who had either practised law or were students of law — some of them, although they didn't have any legal training, were obviously astute citizen representatives, they were people who had spent considerable amounts of their personal time examining the very specific detailed provisions of this legislation. And I would suggest that it makes no sense to fly in the face of those sorts of recommendations. Those were considered, deliberately considered recommendations that were made in good faith and I think they should be given considerable weight in our determinations here this morning. I see no reason, I can't, if the Attorney-General could point to one deponent's brief, to one brief, one submission, where it was thought that there was no confusion, where there was no difficulty with respect to definition of these types of assets, then I would say that he might have made a bit of a case. But he doesn't do that, because he can't. It's not possible.

On this particular subject it was fairly clear that everybody was somewhat confused, so rather than do that, he says, "Well, it's obvious, and the courts will do what is obvious." But very often, they don't do what is obvious; they do all sorts of crazy things, and that's of course what brought us to the point of having to draft new marital legislation in this province, is that the courts weren't going at all what was obvious or fair or just in all circumstances. They were just interpreting the legislation to the best of their ability, within the limitations imposed by the Legislature.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, I was trying to measure the import of what Mr. Mercier had to say as being the only contribution on this proposed amendment in opposition to it. As I recall the Act, the only reason for a difference in definition between commercial and family asset is the weight of discretion on division in Section 13. I may be wrong, and I'd very much like to be corrected if there's anything else. —(Interjection)— Well, the Attorney-General agrees; there is a distinction between commercial and family assets only on the question of division of the property, under Section 13, and yet Mr. Mercier brought in certain assets which he indicated in his opinion are of the type of family asset which would be divided and he mentioned bonds and RHOSPs, and RSPs, as being what he believes are of the nature of family asset which would be divided. He said it because it's logical, because a family plans for its future and therefore, as part of its need to provide shelter, transportation, household, educational, recreational, social or aesthetic purposes, so provides for retirement, for savings, for special needs of the family in the future. So here he argues that this is of a nature of family asset and then he argues it should be left as commercial because he doesn't believe it would be treated as commercial as compared with family. Now these are my words, but these are the only conclusions one can draw from what he said.

So I have to draw another conclusion. Can it be that his opinion is not shared by other people in his group and therefore that they are insisting on a difference? Because from what he said, I don't understand why it isn't a family asset right off the bat. RHOSP is dealing with a family home;

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RRSP deals with retirement on behalf of the family obviously. Here a family decides and usually in a clear-cut, positive way that they will deny themselves certain ongoing needs in order to set aside moneys for retirement, and that's marital, that's a family asset, but it's being called commercial. I want to ask the Attorney-General if he believes, as he said he did, that these types of assets he himself described as being, in his mind, clearly divisible as if they were family assets, are there other members of his group who don't agree with him, and is that the reason why we're having this kind of a debate?

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, earlier Mr. Cherniack indicated that if there was a consensus we should be able to proceed with this. If there is no consensus then obviously the matters would be voted down. The Attorney-General has declared the government policy with respect to the proposed amendment and it's on the record. There is no consensus. I move that the question be put.

QUESTION put on the amendment, MOTION lost. (Yeas 3; Nays 5)

MR. CHAIRMAN: Mr. Mercier has an amendment on 1(b) as distributed. Do all members have a copy of it?

That clause 1(b) of Bill 38 be amended by adding thereto, at the end thereof, the words "but not including pension schemes or plans, savings bonds, or deposit receipts" and by deleting the words "pension schemes or plans" in line three thereof.

MR. CHAIRMAN: 1(b)—pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, what do you mean 1(b)—pass? You mean the amendment? Mr. Mercier's amendment.

MR. CHAIRMAN: Well, yes, as amended I meant to say.

MR. CHERNIACK: Well, it's not amended yet. Mr. Chairman, Mr. Spivak is in a hurry. Mr. Spivak has determined that the decision will be announced and there will be a vote. Let me make it clear that I did not say that I approved of his type of operation but rather that I could see that if that's the way he wanted to operate and that is to vote against it, then clearly they could be taken item by item as he said that they should be and voted down. But I think that this is the exercise where we have proven yesterday that there are suggestions that are made and thoughts that come up in committee that are useful to the extent that the majority accept them and that is part of the parliamentary exercise and the process.

Now if Mr. Spivak wishes to get this over with, then I don't know why he's waiting to have each item debated. Let him move the bill be treated all as one and voted on and be done with it. But I think that it is important and I do not understand how it is that a fixed term annuity should be considered a commercial asset. Mr. Mercier must know why he included that and why it had been left out. Was it inadvertence or is it some new idea that came out as a result of discussion in the committee? How is an annuity a commercial asset? What are its characteristics?

MR. PAWLEY: Well, Mr. Chairman, I want to also express my dismay over Mr. Spivak's premature use of the motion to call a vote. You know we've been dealing with this for some three years. We have the accumulated benefit of in fact hundreds of submissions over the past three years including some 50 in the past few days. It's not like just another piece of legislation, the faster we get through it the better; let's do it page by page type of thing. I can recall last year when we dealt with our Marital Property and Family Maintenance Act, I don't believe the then government — I'm trying to recall — moved question, certainly not with the rapidity and the frequency that Mr. Spivak seems to be so desirous of calling and ramming this legislation through. It's been, up to this point, legislation that has been dealt with very fully, in a non-partisan way, and I have to say, Mr. Chairman, that I'm personally very resentful of the fact that in fact we hardly entered into the discussion of this most important question, commercial and family assets, and Mr. Spivak moves question, a form of closure, and if that's the trend that we're going to establish throughout this bill, that we're working under that sort of canon, then we're not going to come up with the type of improved legislation that we ought to be working toward as legislators.

MR. CHAIRMAN: Mr. Domino. Would you use the microphone please?

MR. DOMINO: Mr. Chairman, Mr. Corrin has presented these proposed amendments and th

and members of the committee have listened and discussed this. We've been discussing this particular point now for in excess of 50 minutes and it's not a long period of time, but when you consider —(Inter-jection)— 50, not 15. When you consider the fact that the point that everybody has expressed their opinion, the Attorney-General has said he's not willing to accept these particular revisions, it's obvious that what's happening now is that some members of this committee would like to drag out the proceedings, they would like things, for whichever reasons of their own — which I'm not aware of — they would like to make this as long and arduous as possible. I, and I know all members of this committee, or many members of this committee, those who are my colleagues in my caucus, would like to see the best possible legislation. We're working towards that. Repeating the same arguments over and over again, continually attempting to wear down the Attorney-General or members of the committee, I don't think serves the purpose and our purpose should be trying to develop the best possible legislation for the people of Manitoba.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I don't think that the Member for St. Matthews has either been paying sufficient attention to this morning's proceedings either as a result of his own predisposition in this respect or as a result possibly of his impending boredom. I don't know. Perhaps he is evincing a disinterest on his own part in the legislation before the committee. But he certainly, by his very remarks, has indicated to the members of committee who have been participating that he has not been following what has been transpiring in this morning's session. He suggests that we've been discussing the question of the assets, commercial and family assets, for 50 minutes when the committee has now only been sitting for 60 minutes. We've only spent some of the last 15 possible minutes dealing with this particular topic. He's obviously confused. We spent a considerable time dealing with the enforcement provisions and other provisions of the previous bill, The Family Maintenance Act, prior to proceeding to deal with Bill 38.

MR. DOMINO: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Mr. Domino on a point of order.

MR. DOMINO: As a matter of fact, and I think if you would . . . I'm not sure if Hansard or the record shows time, but I noted and I've been listening carefully and I note also that the former Attorney-General, Mr. Pawley, glanced at the newspaper as I did earlier. I've been listening and paying attention for several . . .

MR. CHAIRMAN: Order please.

MR. DOMINO: My point of order is this, it's a point of information. That we started discussing his this discussion started at exactly . . .

MR. CHAIRMAN: Order please, order please. I think it would be in the best interests of the committee if we got back to discussing the bill rather than whether we have been on a certain item for 15 minutes or 50 minutes. I think that's rather immaterial to the discussion. Mr. Corrin.

MR. CORRIN: Mr. Chairman, I still have the floor and I will continue and I point out that most members of committee, having the opportunity to take in proceedings first-hand have not sought recourse to the newspapers for their information. I would suppose that's one way of gaining some knowledge as to what has been transpiring here, read the morning papers, but there is far better . . .

MR. CHAIRMAN: Order please. Order. If I'm calling Mr. Domino to order and asking him and other members to get back to the bill and in dealing with it clause by clause, I would expect that Mr. Corrin would do the same.

MR. CORRIN: I will, Mr. Chairman, and I thank you for directing my attention back to the business of the committee. Mr. Domino did lead us a bit astray and we should get back to the business at hand. I believe that the business at hand was the question of the amendment which would provide for the fixed life or fixed term . . .

MR. CHAIRMAN: Mr. Mercier's amendment.

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MR. CORRIN: Yes, Mr. Mercier's amendment, to provide for a life or fixed term annuity being explicitly defined under sub-clause (b) as commercial asset. I tell you, Mr. Chairman, that if that's the case, if Mr. Mercier is so concerned about this particular amendment, I must say it's almost laughable, it's quite humorous that he tells us on the one hand that he sees no problem, his reading of the legislation, although it defies the submissions made by several dozen people who came before us. There's no problem in determining that all savings accounts, pension plans, spousal paycheques, bonds, RRSPs, RHOSPs, all these things are family assets," he says, "that's clear on the face of the legislation, but life or fixed term annuities, well that's not clear. We can't presume those to be a commercial asset on the face of the legislation. We have to have a special amendment. There's a need for a special amendment." And I question that. I really question on that basis, I question the good faith of the Attorney-General. I would be quite willing to consider his amendment if he would be willing to give equal consideration, equal weight in his deliberations respecting our amendment. But he seems to demonstrate a pronounced and acute concern for a very explicit definition of commercial assets. It doesn't want to leave that to the vagaries of judicial interpretation or course of argument during litigation. That he wants to be very specific about. But not such thing as a spousal paycheque, that's of a different status altogether. Why bother to explicitly state that a spousal paycheque is a family asset? Everybody knows what people intend when they get a paycheque.

Well, I suggest to him that there are some people in this province who, when they get a paycheque don't turn that over to their wife, don't put it in an account that is ordinarily used for shelter, transportation, household, educational, recreational, social or aesthetic purposes. God knows what aesthetic purposes really is intended to mean anyway. But there are people, as we heard from the many deponents who came before committee who behaved very selfishly, people who don't share and I think those are the people we're concerned about. We're concerned about protecting people who are presently in defensible circumstances because they're trying to contend with marriage relationships that have been led astray by such non-sharing spouses and we're trying to provide legislation that will tend to make that relationship, the marriage relationship, more equitable, more just. Certainly if we're to do that, I think that we have to treat all equally and if we're going to consider, we're going to consider the Attorney-General's amendments, I think that the Attorney-General owes it, not only to the committee but to the people of Manitoba to consider the amendments we've put with respect to commercial and family assets.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: No, I'm . . .

MR. CHAIRMAN: All right. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I listened to Mr. Domino very carefully and I think we were in the same room during the debate on this and the preceding amendment. I heard Mr. Mercier speak on that and indicated, to my understanding, that he believed that the items that he enumerated were of such a nature as would be treated as if they were family assets in the equal distribution. I think he spoke in favour of Mr. Corrin's amendment, and then he said he would vote against because he believed it would be taken care of anyway. I did not hear Mr. Domino speak. He said "we have discussed it; we have decided that we don't want to deal with it." I didn't hear Mr. Domino speak at all today on this issue. I didn't hear Mr. Kovnats speak on this issue; I didn't hear a word from him. I didn't hear from Mrs. Price. I didn't hear from Mr. Spivak when it came to dealing with the nature of the amendment before us.

So what I heard was Mr. Pawley and Mr. Corrin, I heard myself, speaking in favour of the proposal of swinging into family assets away from commercial, and I heard Mr. Mercier say words that sounded like he agreed but that it wasn't necessary. So I must tell Mr. Domino, through you, Mr. Chairman, that no one else expressed a point of view from the Conservative group and therefore, although they don't have to do so, he shouldn't pretend that it has been discussed in this committee from that standpoint.

Now, coming specifically to this amendment, I asked the Attorney-General to spell out why he thinks a fixed term annuity is a commercial asset. Now I have to go a little beyond that and talk about what his bill reads. His bill defines what family assets are, and not specifically because he describes the nature of a family asset, which could well include, I suppose an RRSP, and it says including, without restricting the generality, I think it is five different descriptions, and then you come back to commercial assets and it says it means an asset that is not a family asset. Well, you know it is not necessary to say any more, is it? If it says commercial asset means an asset that is not a family asset, what we should be doing is describing a family asset. Now, why is it that Mr. Mercier is proposing to include a fixed term annuity into a commercial asset when it would be that if he

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believed that it is not a family asset? That's why I question the construction and the indication that makes commercial very broad and general, and why bring it in at all? Why this amendment before us now? What was there in the bill that would have made it uncertain and would have made the term "annuity" a family asset if he weren't bringing in this amendment? That I don't understand and that's what I am looking for clarification on.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, the amendment is there only for the purpose of clarification. There have been a couple of court cases in recent years which have thrown doubt on the fact that an annuity policy may not be included within the definition of a life insurance policy, so it is there just for clarification.

MR. CHERNIACK: May I ask, Mr. Mercier, do these court cases indicate that a life or fixed term annuity would be considered a family asset if you weren't bringing in this amendment?

MR. MERCIER: Those court cases did not deal, obviously, with the question of whether or not an asset was a family or a commercial asset, just whether or not an annuity was within the definition of a life insurance policy under The Insurance Act.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: As a matter of interest, Mr. Chairman, I would like to ask the Attorney-General, since he is so concerned about the definition, as he has just discussed with Mr. Cherniack, of life or fixed term annuity, I would like him to tell me where he sees the possibility of a court determining that a Canada Savings Bond is a family asset, on his reading of these sub-clauses, how he thinks the court would be assisted in coming to the conclusion that such an investment was indeed a family asset? Where is it written?

MR. CHAIRMAN: Are you ready for the question on the motion on Mr. Mercier's amendment? Mr. Corrin.

MR. CORRIN: I think that is a fair question; it really is. Mr. Chairman, the Attorney-General is so cock sure that there is no ambiguity, there is no problem. He says that dozens of people were wrong, their briefs were ill considered. . .

MR. CHAIRMAN: I don't think he . . .

MR. CORRIN: Well, that's our presumption because they suggested that this needed clarification and he is now stonewalling and adopting a very tight-lipped stance. I am asking him to stand in the stead of a court, of a judge having to make a decision, and show us what authority he would rely on in making a decision under this Act that a Canada Savings Bond or a spousal pay cheque was indeed a family asset.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, I really object to the remarks of the Member for Wellington and the suggestion that the Attorney-General is stonewalling. I don't think that has been the case in the way in which he has handled himself throughout this whole procedure. Unfortunately, the members opposite are not prepared to accept the fact that he speaks for the government and states government policy with respect to the proposals that have been made, and once that has been done, that the position of the government is known. It is not necessary, Mr. Chairman, for us to proceed with each member of the committee of the government side speaking to the bill or expressing their opinion. He speaks collectively for us and I think that in all respects he has been both fairly accommodating. I have witnessed other Ministers at other different times where they have had to pile the bills through. He has not only been accommodating, I think he has expressed very specifically the position of the government so that it has been clear and that the members opposite will know. In those situations where he is not sure, he has asked for time, and I think to that extent he has followed the pattern that many Ministers in the past have not followed. So I would suggest, Mr. Chairman, that the word "stonewall" is really not appropriate.

MR. CHERNIACK: Only to Mr. Spivak, not to Mr. Mercier.

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MR. SPIVAK: Well, Mr. Chairman, the Honourable Member for St. Johns can refer to me all he wants and try and bait me all he wants. The reality is, I think, that we have been in this committee for a substantial period of time unnecessarily because of the repetition and because of the trick that the Member for St. Johns has played within this committee. He knows the rules and he knows the capacity of what can be done. To that extent, he is quite talented, but I don't necessarily mean to give him any credit for the substantive views that he has tried to present.

MR. CHERNIACK: On a point of privilege, Mr. Chairman.

MR. CHAIRMAN: On a point of privilege, Mr. Cherniack. I might point out that Mr. Spivak was not on a point of order or point of privilege. I recognized him because Mr. Mercier wasn't quite ready to proceed. Mr. Mercier is ready now to proceed to speak to the question put by Mr. Corrin — or observations.

Mr. Cherniack, on a point of privilege.

MR. CHERNIACK: Mr. Chairman, on a point of privilege, I just object to the suggestion being made that I am using tricks in my role as a member of this committee. I am not aware of any trick that I have used, nor am I aware of the parliamentary aspect of referring to a member using tricks. I don't ask Mr. Spivak to withdraw; I don't care whether he does or not, I just go on record to say that he had no justification in making that suggestion.

MR. CHAIRMAN: Mr. Mercier, then Mr. Pawley, then Mr. Parasiuk.

MR. MERCIER: Mr. Chairman, in answer to the Member for Wellington, the test as to whether the Savings Bonds are a commercial asset or a family asset may very well depend on the intention for which the bonds were purchased. Under family asset, it refers to an asset owned by two spouse or either of them and used for shelter or transportation or for household, educational, recreational social or aesthetic purposes. I would suggest that. . .

MR. CORRIN: How about used for savings or for old age security? Are those not family asset any more? Is that a household? Is that how you would describe it? Household doesn't mean for buying brooms or mops or household detergent or beds or chattel's, furniture?

MR. CHAIRMAN: To Mr. Corrin, Mr. Mercier is the recognized speaker. I have named who the next two will be. Mr. Mercier, would you like to continue.

MR. MERCIER: Commercial asset, Mr. Chairman, refers to an investment other than for those purposes, so I think that it depends upon the purpose for which the bonds were purchased, whether they are family or commercial assets. In any event, Mr. Chairman, I want to say once again, because I think repetition is the very heart of this committee, that under the discretion sections, I am satisfied myself that standing alone, these types of investments purchased for these purposes would in the vast majority of cases be shared equally under either Section 13(1) or Section 13(2).

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman,

MR. PAWLEY: Mr. Chairman, first I do want to say that we have been preached to by Mr. Domin and also Mr. Spivak, and nothing is going to be gained, Mr. Chairman, by members preaching to us that we are consuming too much time. This is very very important legislation. We are prepared to sit a very long period of time, if necessary, to improve this legislation and I particularly resent suggestions we are wearing down the Attorney-General. No member of this committee is attempting to do that, certainly not the members of the opposition that kept the committee proceeding until shortly before three o'clock this morning. It certainly wasn't the desire of the opposition that take place. I resent suggestions that Mr. Cherniack is undertaking tricks. All that it indicates to me is that government members are finding it difficult to contend with some of the positions that are being put so well to this committee by the Member for St. Johns. —(Interjection)— I agree let's get on, but if we are going to be preached to every 20 or 25 minutes by members of the government, it is not going to speed the process, it is going to delay the process, because we are trying to deal in depth with this and if there is preaching, it is not going to assist in the mover of this legislation.

Insofar as the section under review, I am wondering if the Attorney-General would, in view of his statement again that he feels that there is no problem, that it would be reflected in an equi

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sharing basis, why not deal with this as a family asset? What about adding the words, "for retirement purposes" as a secondary choice so that it would be very clear that when we deal with pension plans, annuities, that exist for purposes of retirement, that they would be dealt with on a family asset basis?

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: I'll stand down. I think that the . . .

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Thank you, Mr. Chairman. I want to say in response, first of all to the Attorney-General's remarks about something to the effect, and I'll paraphrase him very loosely, that the heart of this committee is delay and . . .

MR. CHAIRMAN: I would ask all members of the committee if we could deal with the bill and try and disregard comments made by members of both sides as to tactics that have been used by either parties. I don't think that we are serving any worthwhile purpose carrying on in that argument as to methods and tactics. Could we ask you, Mr. Corrin, if you would speak to the bill in front of us.

MR. CORRIN: I will, Mr. Chairman, but I want to assure all members of the committee that I do so in good faith and that I am sincerely concerned about this question that is before us dealing with the definition of assets. It is possibly the most important question that we are going to have to broach in our deliberations here and in the Assembly.

The Attorney-General's defence of this particular wording is rife with loopholes. To suggest that a Canada Savings Bond, for instance, would be deemed to be a family asset by this legislation because it would be used for household purposes, is ridiculous, it's specious. How many instances of savings involving that sort of asset would involve the use of the money invested in that way or the interest of the money used, invested in such an asset, for household purposes? I mean, I have to presume that household means household, and household means for the purpose of maintaining the house, and that may even include purchasing some furniture or some chattels for the house, but that is a very limited situation indeed. I think most people invest in Canada Savings Bonds or their security in their latter years. I think that is the common usage of that sort of investment.

I don't think that we would have very much disagreement if we were to bring in a representative sample of 1,000 Manitobans and ask them why they invest in Canada Savings Bonds. I think that is the purpose for which they are designed. I think that is what the government, in making efforts to bring them before the public, plays up. That's how they bring them forward to the public, and think that is the normal usage of that sort of asset.

I would remind the Attorney-General that under the present definition of commercial assets, such assets are — and let's read the legislation so we're all of the same mind — it says, "commercial asset means an asset that is not a family asset," and then it goes on to say, "and any investment," and I think that's key, "and any investment, including deposits with a bank, trust company, credit union or other financial institution other than in a savings account, checking account, or current account, ordinarily used for shelter, or transportation or for household, educational, recreational, social or aesthetic purposes."

It's obvious that something such as a Canada Savings Bond or a spousal pay cheque is not, as this legislation is presently constituted, automatically presumed to be a family asset. A Canada Savings Bond, for instance, I think could very easily be defined without any contortions, without any legalistic contortions or other intricacies as an investment in a financial institution and as not being one ordinarily used for shelter, transportation, or for household, educational, recreation or social or aesthetic purposes. I think that's just confusing and I think that the only way we can go about this sort of redefining of assets in order to give effect to what I think we all intend because I think we have come to a consensus, there is concurrence among members as to what we intended. Generally speaking, commercial assets are obviously those that are of a business nature. That's what I think we all agree upon. And to do that I think the only way to do that effectively and efficaciously is to simply rule that anything that is not provided to be a family asset, by definition, will be a commercial asset — a very simple means of establishing equity within the definition of these two assets.

I, for one, am most concerned that this be spelled out, because I simply cannot share the Attorney-General's certainty on this particular point and I think it is just so fundamental, it is so

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germane to our consideration this morning, that this side, the New Democratic side, cannot give up this battle. If we seem strident, Mr. Chairman, I suppose I might apologize, because we do not intend to be strident, not for the purpose of being strident alone, but strident perhaps only for the purpose of making this bill the best possible law for the people of our province. I would feel much better about this if, frankly, as we have discussed before, if members on the other side, the government side of the committee, would make representations. I'm not sure that the Attorney-General speaks for all his colleagues, simply because his colleagues never speak and think that's the very purpose of having a committee. I think that's why we do it. We step away from the normal processes, adversarial processes of the Legislative Assembly; we come into a committee for the purpose of sober reflection on the provisions of legislation that we wish to bring before the Assembly. And I think that the main purpose of doing that is in order to make the law as technically precise, as technically sound, as humanly possible. We're not doing that if we simply take the position that the Attorney-General has, we're not doing that at all.

So I would suggest that we get down to work. We worked last night to 3 o'clock and we spent long hours, but we get down to work and we hammer this out. Let's get something that meets what I have defined as our consensus.

MR. CHAIRMAN: All right. We have a motion before the committee and that is the amendment moved by Mr. Mercier on 1(b).

QUESTION put on the amendment, MOTION carried (Yeas, 5; Nays, 4.)

MR. CHAIRMAN: 1(b) as amended—pass; 1(c)—pass; 1(d) . . .

MR. CORRIN: Excuse me, Mr. Chairman, you are not paying attention. I had my hand up when we discussed 1(b).

MR. CHAIRMAN: On 1(b)?

MR. CORRIN: Yes, Mr. Chairman. I'm going to place another amendment.

MR. CHAIRMAN: All right, we will revert back to 1(b) for the Member for Wellington.

MR. CORRIN: Perhaps following the precedent before this could be printed and distributed to members, prior to our deliberations.

MR. CHAIRMAN: Have you another copy that you could carry on explaining it while it . . . ?

MR. CORRIN: Yes, but I think it would be better if we had it before us.

MR. CHAIRMAN: All right, we will recess for a moment. Can we hold 1(b) back and go on to other items?

MR. CORRIN: Yes, that would be fine; that would be fine, Mr. Chairman.

MR. CHAIRMAN: All right. 1(c)—pass; 1(d)(1)—pass; 1(d)(2)—pass; 1(d)(3)—pass; 1(d)(4)—pass; 1(d)(5)—pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I move that we add a section 1(d)(6) reading "Taxable Earnings".

MR. CHAIRMAN: Maybe, Mr. Cherniack, you could repeat your motion.

MR. CHERNIACK: I move that after 1(d)(5) a subsection be added and numbered 1(d)(6) reading "Taxable Earnings".

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, that's covered in 1(d)(2).

MR. CHERNIACK: I don't read that, Mr. Chairman. 1(d)(2) speaks about moneys that have been saved and set aside. I'm talking about before they are saved and set aside, the earnings of the family. How is that covered in 1(d)(2)? If it's covered, then that's fine. Let's agree that that's so

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now ask the Attorney-General to please agree that he wants it to be covered and then decide how it's covered.

MR. MERCIER: Well, it's covered by the legislation. The Member for St. Johns can read it as well as I can, Mr. Chairman.

MR. CHERNIACK: Mr. Chairman, I don't want to quibble with the Attorney-General. I don't read it here that way. I would like it to be that, but I don't read it. The family asset under 2 (2) includes money in a savings account. It says, "where the account is ordinarily used for shelter or for transportation." Now, in many occasions, money doesn't pass through a bank at all, or a trust company, or a credit union. Earnings may be in cash or they may be by cheque and they may not pass through the accounts referred to in (d)(2). Now I really am not quibbling, Mr. Chairman. I did not understand that taxable earnings are included, and if Mr. Mercier thinks they are or should be, then isn't this the occasion to clarify that they are and how it is so described, because otherwise we will have to ask the Legislative Counsel to indicate where taxable earnings are set out anywhere in the legislation as a family asset.

MR. MERCIER: Well, Mr. Chairman, in paragraph 1(d) it includes the assets used for certain purposes. It may very well that not all of the taxable earnings are used for family purposes but they may be used for commercial purposes. There are provisions in The Family Maintenance Act for the personal expenses, for the right to ascertain the income of the other spouse. Perhaps Mr. Cherniack could indicate what his objective is.

MR. CHERNIACK: My objective is the recognition that the pay cheque, the earning of the family, be considered a family asset and thus have a greater degree of restriction on the court for varying from the presumption of equal division. That's clearly what the whole debate is about as between what is commercial and what is a family asset. And since I had grave doubts about that same justification as to whether or not the government considered the pay cheque to be a family asset, I thought I would suggest that say so.

Now, if Mr. Tallin can satisfy me — it wouldn't take much for him to satisfy me — that it is a family asset and that it is without my amendment, fine, I would withdraw it. But if it needs my amendment to make it so, then I have moved it. I'm not even debating it at any length, you will notice.

MR. MERCIER: Mr. Chairman, my advice from Mr. Tallin, with which I certainly agree is that some of it is a family asset and there may be part of it that would be considered to be a commercial asset.

MR. CHAIRMAN: Are you ready for the question . . . ? Mr. Cherniack.

MR. CHERNIACK: No. I would like to ask Mr. Tallin whether his suggestion that some of it is a family asset is that what is covered in the preamble of (d), that is, a general description of family asset, or does he see it in items 1 to 5 inclusive?

MR. TALLIN: No, in the opening words of (d).

MR. CHERNIACK: Just in the opening words.

MR. TALLIN: Where it's used for those types of family purposes that are described in the opening words of (d).

MR. CHERNIACK: Mr. Chairman, I fully understand what Mr. Tallin is saying. I would like to remove my doubt, and that's why my amendment.

QUESTION put on the amendment, MOTION lost. (Yeas, 4; Nays, 5.)

MR. CHAIRMAN: (d)—pass. Now can we revert back to (b) and Mr. Corrin's amendment? Mr. Corrin, because of the handwriting with the typewritten, would you like to read it into the record?

MR. CORRIN: Yes That clause 1(b) of Bill 38 be amended by adding thereto at the end thereof the words "but not including pension schemes or plans, savings bonds or deposit receipts" and deleting words "pension schemes or plans" in line three thereof.

And that Clause (d) of Bill 38 be amended by adding thereto at the end of sub-clause (ii) thereof

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the words "and savings bonds, deposit receipts and pension schemes or plans".

This amendment, Mr. Chairman, does not differ significantly from the former amendment, but I think in some respects is an effort to give some marginal degree of clarity to the intent of the legislation. I am particularly concerned because I feel that it is imperative that at the very least this committee give consideration to a very common sort of family asset, which is a term deposit. I do not believe that under this particular wording that term deposits would necessarily be automatically presumed to be family assets, or in the nature of a family asset. I think that the definition which specifies money in a savings account, chequing account, or current account, with a bank, trust company, credit union or other financial institution, and again specifying that the account be ordinarily used for shelter, transportation or for household, educational, recreational, social or aesthetic purposes, may well preclude such an investment and asset as a term deposit. I think that it would be arguable that term deposit would not fall within the purview of the sub-clause, and therefore I have included the words, "deposit receipts" in (d)(ii), because I think that term, and that was a term that was recommended to me by the Legislative Counsel, that term would make very definite and explicit what the intention of the Legislature was with respect to the definition of family assets in that respect.

I also include the savings bonds, because again I think, for reasons that I have already given on several occasions this morning, I am absolutely certain that they too will fall prey to inadequate drafting of this section. Pension schemes or plans I bring back again for the committee consideration because I suppose I feel that this is wrongly deemed to be a commercial asset by the legislation. It's fairly explicit. It says that, "rights under life insurance policies and pension schemes or plans, or superannuation schemes or plans, are commercial assets." And I simply do not feel that in fairness that such a plan, which after all represents the only security that most people would have in their senior years, that the contributions made to such a plan should be able to be disposed of arbitrarily through the wide discretion provided a court under Section 13 dealing with commercial assets. I think that it is absolutely imperative that it be recognized that pension plans are a form of joint saving, they are built up for the very purpose of providing both spouses with security, and it's absolutely imperative that when the marriage is dissolved, when there is termination of the relationship, severance of the bonds, that pension plans and schemes be dealt with as a family asset. I don't think that the Attorney-General can argue with me on that point as far as the interpretation goes, I think he would have to agree that it's quite clear — pension plans are commercial assets under the present legislation. That's unequivocal, it's on the face of the legislation. It says it.

So, I would exhort committee to give consideration to putting pension plans where they belong along with savings bonds and term deposits. And I would be very interested, of course, in hearing any explanation that the Attorney-General, or for that matter any member of the government would like to give in defence of not doing so. Any explanation whatsoever, Mr. Chairman.

MR. CHAIRMAN: Mr. Parasiuk.

MR. PARASIUK: Mr. Chairman, I look at this amendment and I have to look at 1(b) and 1(d) (together, and I look at the definition on Page 2, "an account is ordinarily used for shelter" — and that's a normal type of family account — "or transportation, or for household" — now by household I assume that would take into account food and household operation and maintenance items — "educational," — which seems rational —, "recreational," which seems rational, "social or aesthetic purposes." And when I look at that I find that there is that one gap, and that really deals with retirement, and I know that my colleague, the Member for Selkirk had asked that the Minister consider that. He has considered it and determined that it shouldn't be included, and I see that this is the only way that you can get that connotation into 1(d)(ii) as a family asset. Surely, when you look at that description of uses of money in an account it's inclusive apart from one item, and that the retirement aspect, and that's the one thing that I think is something that is a family concern. It is not a concern solely of one individual in the family, it surely is the concern of both, and something that the family looks at specifically and quite deliberately.

I don't think people treat pensions, or should treat pensions as something that is used for investment purposes, where you get some type of a tax deduction for putting your money into pension scheme, and then you take it out and use it for investment purposes, because that could have serious detrimental effects on that family's security into the future. Now I know a lot of people do that, in fact, they feel they get a tax break or they get a lump sum to use for investment purpose and that's how pensions are used occasionally. But the way I read this, if it is still left in the commercial field a spouse can take that pension fund, cash it in, and use it for commercial purposes, and that could be to the detriment of the family itself, so that's why I urge that this item be included and my colleague from Wellington points out.

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MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Chairman, we are getting very close, I think, to adjournment time. I'd like to have an opportunity to review this over the break period, whatever period that may be and raise when we resume the meeting.

MR. CHAIRMAN: Can we leave this item l(b) and the amendment of Mr. Corrin's with Mr. Mercier? Committee rise.